

No. 19-_____

IN THE
SUPREME COURT OF THE UNITED STATES

Heather Marlowe,

Applicant,

v.

City and County of San Francisco et al.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

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HEATHER MARLOWE

**APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

TO: Hon. Elena Kagan, Circuit Justice for the Ninth Circuit:

Under this Court's rules 13.5 and 22, Applicant Heather Marlowe respectfully requests a 60-day extension to file her Petition for Writ of Certiorari. In support of this application, Applicant states:

1. Applicant intends to seek review of the decision of the United States Court of Appeals for the Ninth Circuit in *Heather Marlowe v. City and County of San Francisco et al.*, Case No.: 17-15205 (9th Cir. 2017), a copy of which is annexed hereto. The Ninth Circuit panel's decision was issued on February 20, 2019. Absent the requested extension of time, a petition for certiorari would be due on May 21, 2019. Applicant requests that the time for filing be extended by 60 days, to and including Monday, July 22, 2019.¹

2. The Ninth Circuit decision affirmed dismissal of Applicant's suit based on under 42 U.S.C. § 1983 for failure to state a claim and on statute of limitations grounds. In doing so, the court strictly applied California's two-year statute of limitations for personal injury despite the City's having forthrightly admitted that it had delayed testing Ms. Marlowe's rape kit because it had a "backlog" resulting from "more important crimes." *See Marlowe v. City and Cnty. of S.F.* (No 17-5205), Slip Op. at 2 (9th Cir. Feb. 20, 2019). It therefore found that the City and County

¹ 60 calendar days from May 21, 2019 yields Saturday, July 20, 2019. Accordingly, the next proper day for filing would be Monday, July 22, 2019. *See* S. Ct. R. 30.1.

defendants were not equitably estopped from asserting a statute of limitations defense, and it accordingly declined to reach Ms. Marlowe's *Monell* and equal protection claims. *Id.*

3. That decision – as a petition for writ of certiorari will develop more fully – is a serious candidate for this Court's review because:

- a. A city's decision to "prioritize other crimes" above clearing a backlog of untested rape kits presents a prima facie equal protection violation, as the majority of rape victims are female.
- b. The conduct described in part (a), to the extent it is legal at all, should equitably estop a defendant from asserting a statute of limitation defense to a § 1983 claim where there has been a delayed filing due to defendants' stated policy decision.
- c. Because the conduct described in part (a) was, by the City's own admission, a policy choice, the Ninth Circuit erred in dismissing Plaintiff's claims for *Monell* liability on strict statute of limitations grounds.
- d. The pleading standard for individual liability in a suit arising from untested rape kits must be clarified in light of (a) and (b).

4. Appellant's counsel of record – who was not appellant's counsel before the Ninth Circuit – is about to begin a four-week jury trial, and has, among other urgent professional commitments, opening briefs in the state court of appeal due May 15 and May 16, a reply brief due in the state court of appeal on May 24, another opening brief due in the state court of appeal on June 3, and an opening

brief due in the Ninth Circuit on June 10. The extension requested would allow Applicant and her counsel the necessary additional time to review, analyze and utilize all those organizations interested in supporting her Writ, as well as give counsel the necessary time to bring herself and her firm up to speed in this matter.

For these reasons, Applicant requests that the date for her filing a petition for a writ of certiorari be extended to and including July 22, 2019.

Respectfully submitted,



Becky S. James

Counsel for Applicant Heather Marlowe

CERTIFICATE OF SERVICE

Heather Marlowe v. City and County of San Francisco et al.

I hereby certify that on this 9th day of May, 2019, I caused one copy of this Application for Extension of Time to File a Petition for Writ of Certiorari to be served on the following by first-class mail:

Noel Francisco
Solicitor General of the United States
950 Pennsylvania Avenue
Room 5616
NW Washington DC 20530-0001
(202)514-2203

I hereby certify that all parties required to be served have been served. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 9, 2019



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